



Office of Governor Bruce Rauner

Governor's Office of Management and Budget
Grant Accountability and Transparency Unit

DRAFT * GATA Proposed Rule Recommendations

The Governor's Office of Management and Budget is privileged to share, for public comment and review, the DRAFT Proposed Rule Recommendations of the Grant Accountability and Transparency Act (GATA).

Several years ago, the Grantee Community started an initiative to remove redundancies and streamline the grant process for the State's human service agencies. As a result, the Legislature passed Public Act 96-1141 requiring recommendations to address inefficiencies and redundancies, and to limit fraud and abuse. The recommendations were the basis of additional legislation, P.A. 97-0558, that created the Management Improvement Initiative Committee (MIIC) effective August 25, 2011. The MIIC recommended that the State follow the Federal grant rules, since the majority of grants issued in the State were Federally-funded or were used as matching, in-kind or maintenance-of-effort as a condition of Federal funding.

Following the MIIC recommendations, **the Grant Accountability and Transparency Act has overarching goals of eliminating duplicative grant requirements and reducing administrative burdens while increasing accountability and transparency.** To this end, the draft rule recommendations, the result of Phase 1 – Rule Making of the implementation of the GATA, are guided by the following principles:

- ❖ **Uniformity.** Every effort is being made to maintain a uniform process throughout the entire grant life cycle by leveraging the new Federal guidance in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Requirements). This will help eliminate redundant grant requirements and reduce administrative burden. Keep in mind that the proposed rules:
 - Can be more, but not less, stringent than 2 CFR 200, so we need to determine if additional requirements need to be added;
 - Need to be flexible so that they can be modified in the future, as part of the on-going monitoring and assessment;
 - Should build in flexibility to recognize the unique requirement of individual grant programs.
- ❖ **Optimization of resources.** Coordination of grant-monitoring activities will increase the efficient and effective use of scarce resources.

The Notice of Adoption for Administrative Rules based on 2 CFR 200 that are applicable to Federal, Federal pass-through and State awards that do not allow for flexibility was published in the August 7, 2015 issue of the Illinois Register. Over the last several months, these rules have been reviewed and analyzed by more than 200 volunteers from the Grantee Community and State agencies, that staff 7 GATA subcommittees and 15 Workgroups.

We are now requesting your review and input on the work that resulted from these Subcommittees and Workgroups. Keeping the GATA's goals and guiding principles in mind, please review the following Draft Proposed Rules and share with your comments or questions with us. You can submit comments and question to **OMB.GATA@Illinois.gov**. Please submit all comments and question by **October 7, 2015**.

Your questions will be added to GATA's Frequently Asked Questions (FAQs) and be posted on GATA's webpage so that everyone can stay up-to-date on the draft rule recommendations.

Thank you for your participation in this effort



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Budget

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Site	Title	Decision
Subpart A 200.0 – 200.99	Acronyms	Approve as is - No changes
§200.0	Acronyms.	
§200.1	Definitions.	
§200.2	Acquisition cost.	
§200.3	Advance payment.	
§200.4	Allocation.	
§200.5	Audit finding.	
§200.6	Auditee.	
§200.7	Auditor.	
§200.8	Budget.	
§200.9	Central service cost allocation plan.	
§200.10	Catalog of Federal Domestic Assistance (CFDA) number.	
§200.11	CFDA program title.	
§200.12	Capital assets.	

§200.13	Capital expenditures.
§200.14	Claim.
§200.15	Class of Federal awards.
§200.16	Closeout.
§200.17	Cluster of programs.
§200.18	Cognizant agency for audit.
§200.19	Cognizant agency for indirect costs.
§200.20	Computing devices.
§200.21	Compliance supplement.
§200.22	Contract.
§200.23	Contractor.
§200.24	Cooperative agreement.
§200.25	Cooperative audit resolution.
§200.26	Corrective action.
§200.27	Cost allocation plan.
§200.28	Cost objective.
§200.29	Cost sharing or matching.
§200.30	Cross-cutting audit finding.
§200.31	Disallowed costs.
§200.32	[Reserved]

§200.33	Equipment.
§200.34	Expenditures.
§200.35	Federal agency.
§200.36	Federal Audit Clearinghouse (FAC).
§200.37	Federal awarding agency.
§200.38	Federal award.
§200.39	Federal award date.
§200.40	Federal financial assistance.
§200.41	Federal interest.
§200.42	Federal program.
§200.43	Federal share.
§200.44	Final cost objective.
§200.45	Fixed amount awards.
§200.46	Foreign public entity.
§200.47	Foreign organization.
§200.48	General purpose equipment.
§200.49	Generally Accepted Accounting Principles (GAAP).
§200.50	Generally Accepted Government Auditing Standards (GAGAS).
§200.51	Grant agreement.
§200.52	Hospital.

§200.53	Improper payment.
§200.54	Indian tribe (or “federally recognized Indian tribe”).
§200.55	Institutions of Higher Education (IHEs).
§200.56	Indirect (facilities & administrative (F&A)) costs.
§200.57	Indirect cost rate proposal.
§200.58	Information technology systems.
§200.59	Intangible property.
§200.60	Intermediate cost objective.
§200.61	Internal controls.
§200.62	Internal control over compliance requirements for Federal awards.
§200.63	Loan.
§200.64	Local government.
§200.65	Major program.
§200.66	Management decision.
§200.67	Micro-purchase.
§200.68	Modified Total Direct Cost (MTDC).
§200.69	Non-Federal entity.
§200.70	Nonprofit organization.
§200.71	Obligations.

§200.72	Office of Management and Budget (OMB).
§200.73	Oversight agency for audit.
§200.74	Pass-through entity.
§200.75	Participant support costs.
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§200.77	Period of performance.
§200.78	Personal property.
§200.79	Personally Identifiable Information (PII).
§200.80	Program income.
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**Approve as is - No
changes**

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<p>§200.111 English language.</p> <p>§200.112 Conflict of interest.</p> <p>§200.113 Mandatory disclosures</p>		
Subpart C 200.200 – 200.202	Pre-Federal Award Requirements and Content of Federal Awards	Approve as is - No changes
<p>§200.200 Purpose.</p> <p>§200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.</p> <p>§200.202 Requirement to provide public notice of Federal financial assistance programs.</p>		
Subpart C 200.203	Notice of Funding Opportunities	See marked change Section 200.203
<p>§200.203 Notices of funding opportunities.</p>		
Subpart C 200.204	Federal Awarding Agency Review of Merit of Proposals	See marked change Section 200.204
<p>§200.204 Federal awarding agency review of merit of proposals.</p>		
Subpart C 200.205	Federal Awarding Agency Review of Risk Posed by Applicants	See marked change Section 200.205
<p>§200.205 Federal awarding agency review of risk posed by applicants.</p>		
Subpart C 200.206– 200.209	Pre-Federal Award Requirements and Content of Federal Awards	Approve as is - No changes
<p>§200.206 Standard application requirements.</p> <p>§200.207 Specific conditions.</p> <p>§200.208 Certifications and representations.</p> <p>§200.209 Pre-award costs.</p>		
Subpart C 200.210	Information Contained in the Award	See marked change Section 200.210

<p>§200.210 Information contained in a Federal award.</p>		
<p>Subpart C 200.211-200.213</p>	<p>Pre-Federal Award Requirements and Content of Federal Awards</p>	<p>Approve as is - No changes</p>
<p>§200.211 Public access to Federal award information.</p>		
<p>§200.212 Reporting a determination that a non-Federal entity is not qualified for a Federal award.</p>		
<p>§200.213 Suspension and debarment.</p>		
<p>Subpart D 200.300-200.307</p>	<p>Post Federal Award Requirements</p>	<p>Approve as is - No changes</p>
<p>§200.300 Statutory and national policy requirements.</p>		
<p>§200.301 Performance measurement.</p>		
<p>§200.302 Financial management.</p>		
<p>§200.303 Internal controls.</p>		
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<p>§200.305 Payment.</p>		
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<p>Subpart D 200.308</p>	<p>Revision of Budget and Program Plans</p>	<p>See marked change Section 200.308</p>
<p>§200.308 Revision of budget and program plans.</p>		
<p>Subpart D 200.309-200.335</p>	<p>Post Federal Award Requirements</p>	<p>Approve as is - No changes</p>
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§200.323 Contract cost and price.

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Subpart D 200.336	Access to Records	See marked change Section 200.336
<p>§200.336 Access to records.</p>		
Subpart D 200.337	Restrictions on Public Access to Records	See marked change Section 200.337
<p>§200.337 Restrictions on public access to records.</p>		
Subpart D 200.338-200.345	Post Federal Award Requirements	Approve as is - No changes
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**Approve as is - No
changes**

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Subpart F Section 200.500	Audit Requirements	Approve as is – No Changes
§200.500	Purpose	
Subpart F Section 200.501	Audit Requirements	See marked changes – Section 200.501
§200.501	Audit requirements.	
Subpart F Section 200.502 – 200.521	Audit Requirements	Approve as is – No Changes
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§200.503	Relation to other audit requirements.	
§200.504	Frequency of audits.	
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Appendix 1 to Part 200

Notice of Funding Opportunity

**Approve as is –
except for Part E**

[Appendix I](#)

[Appendix I to Part 200](#)—Full Text of Notice of Funding Opportunity

Appendix I to Part 200	Notice of Funding Opportunity E. Application Review Information	See marked changes – Appendix I to Part 200 Part E
Appendix I-E Appendix I to Part 200 —Full Text of Notice of Funding Opportunity		
Appendix II to Part 200	Contract Provisions for Non- Federal Entity Contracts Under Federal Awards	Approve as is - No changes
Appendix II Appendix II to Part 200 —Contract Provisions for Non- Federal Entity Contracts Under Federal Awards		
Appendix III to Part 200	Indirect (F&A) Costs Identification and Assignment and Rate Determination for Institutions of Higher Education	Approve as is - No changes
Appendix III Appendix III to Part 200 —Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)		
Appendix IV to Part 200	Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations	Approve as is - No changes
Appendix IV Appendix IV to Part 200 —Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations		
Appendix V to Part 200	State/Local Government wide Central Service Cost Allocation Plans	Approve as is - No changes
Appendix V Appendix V to Part 200 —State/Local Government wide Central Service Cost Allocation Plans		
Appendix VI to Part 200	Public Assistance Cost Allocation Plans	Approve as is - No changes
Appendix VI Appendix VI to Part 200 —Public Assistance Cost Allocation Plans		
Appendix VII to Part 200	States and Local Government and Indian Tribe Indirect Cost Proposals	Approve as is - No changes

Appendix VII Appendix VII to Part 200 —States and Local Government and Indian Tribe Indirect Cost Proposals		
Appendix VIII to Part 200	Nonprofit Organizations Exempted From Subpart E-Cost Principles of Part 200	Approve as is - No changes
Appendix VIII Appendix VIII to Part 200 —Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200		
Appendix IX to Part 200	Hospital Cost Principles	Approve as is - No changes
Appendix IX Appendix IX to Part 200 —Hospital Cost Principles		
Appendix X to Part 200	Data Collection Form (SF-SAC)	Approve as is - No changes
Appendix X Appendix X to Part 200 —Data Collection Form (Form SF- SAC)		
Appendix XI to Part 200	Compliance Supplement	Approve as is - No changes
Appendix XI Appendix XI to Part 200 —Compliance Supplement		
Appendix XII to Part 200	Award Term and Condition for Recipient Integrity and Performance Matters	Approve as is - No changes
Appendix XII Appendix XII to Part 200 —Award Term and Condition for Recipient Integrity and Performance Matters		

DRAFT * GATA Proposed Rule

Recommendations Changes * DRAFT

Proposed GATA rule changes are underlined and highlighted for review.

§200.203

Notices of funding opportunities.

§200.203 Notices of funding opportunities.

For competitive grants and cooperative agreements, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) *Summary Information in Notices of Funding Opportunities.* The Federal awarding agency must display the following information posted on the OMB-designated government wide Web site for finding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

- (1) Federal Awarding Agency Name;
- (2) Funding Opportunity Title;
- (3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);
- (4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;
- (5) Catalog of Federal Domestic Assistance (CFDA) Number(s);
- (6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.

(b) The Federal awarding agency must generally make all competitive funding opportunities available for application for at least 60 45 calendar days. The Federal awarding agency may make a determination to have a less than 60 45. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.

(c) *Full Text of Funding Opportunities.* The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to Appendix I to Part 200—Full Text of Notice of Funding Opportunity to this part.

- (1) Full programmatic description of the funding opportunity.
- (2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also §200.414 Indirect (F&A) costs, paragraph (c)(4)).
- (3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§200.204 Federal awarding agency review of merit proposals and 200.205 Federal awarding agency review of risk posed by applicants.

(6) Federal Award Administration Information. See also §200.210 Information contained in a Federal award.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75882, Dec. 19, 2014; 80 FR 43308, July 22, 2015]

§200.204 Federal awarding agency review of merit of proposals.

§200.204 Federal awarding agency review of merit of proposals.

For competitive grants or cooperative agreements, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications. This process must be described or incorporated by reference in the applicable funding opportunity (see Appendix I to this Part, Full text of the Funding Opportunity.) See also §200.203 Notices of funding opportunities. **An appeals process must be described and incorporated with the merit-based review process.**

§200.205 Federal awarding agency review of risk posed by applicants.

§200.205 Federal awarding agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of government wide data.* (1) Prior to making a Federal award, the Federal awarding agency is required by 31 U.S.C. 3321 and 41 U.S.C. 2313 note to review information available through any OMB-designated repositories of government wide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the publicly available information in the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with §200.207 Specific conditions.

(b) In addition, for competitive grants or cooperative agreements, the Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal

awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in §200.203 Notices of funding opportunities.

(c) In evaluating risks posed by applicants, the Federal awarding agency ~~may~~ **must** use a risk-based approach ~~and may consider any items such as the following:~~ **at a minimum use the following criteria:**

- (1) Financial stability;
- (2) Quality of management systems and ability to meet the management standards prescribed in this part;
- (3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;
- (4) Reports and findings from audits performed under Subpart F—Audit Requirements of this part or the reports and findings of any other available audits; and
- (5) The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(d) In addition to this review, the Federal awarding agency must comply with the guidelines on government wide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75882, Dec. 19, 2014; 80 FR 43308, July 22, 2015]

§200.210

Information contained in a Federal award.

§200.210 Information contained in a Federal award.

A Federal award must include the following information:

(a) *General Federal Award Information.* The Federal awarding agency must include the following general Federal award information in each Federal award:

- (1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);
- (2) Recipient's unique entity identifier;
- (3) Unique Federal Award Identification Number (FAIN);
- (4) Federal Award Date (see §200.39 Federal award date);
- (5) Period of Performance Start and End Date;
- (6) Amount of Federal Funds ~~Obligated~~ **Allocated** by this action;
- (7) Total Amount of Federal Funds ~~Obligated~~ **Allocated**;
- (8) Total Amount of the **Estimated** Federal Award **contingent on appropriation**;
- (9) **Estimated** Budget Approved by the Federal Awarding Agency;
- (10) Total Approved Cost Sharing or Matching, where applicable;
- (11) Federal award project description, (to comply with statutory requirements (e.g., FFATA/**GATA**));

(12) Name of Federal awarding agency and contact information for awarding official,
(13) CFDA Number and Name; **CFSA Number and Name**;
(14) Identification of whether the award is R&D; and
(15) Indirect cost rate for the Federal award **if known and applicable** (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

(b) *General Terms and Conditions* (1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) Administrative requirements implemented by the Federal awarding agency as specified in this part.

(ii) National policy requirements. These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See §200.300 Statutory and national policy requirements.

(iii) Recipient integrity and performance matters. If the total Federal share of the Federal award may include more than \$500,000 over the period of performance, the Federal awarding agency must include the term and condition available in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters. See also §200.113 Mandatory disclosures.

(2) The Federal award must include wording to incorporate, by reference, the applicable set of general terms and conditions. The reference must be to the Web site at which the Federal awarding agency maintains the general terms and conditions.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(c) *Federal Awarding Agency, Program, or Federal Award Specific Terms and Conditions*. The Federal awarding agency may include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions. Whenever practicable, these specific terms and conditions also should be shared on a public Web site and in notices of funding opportunities (as outlined in §200.203 Notices of funding opportunities) in addition to being included in a Federal award. See also §200.206 Standard application requirements.

(d) *Federal Award Performance Goals*. The Federal awarding agency must include in the Federal award an indication of the timing and scope of expected performance by the non-Federal entity as related to the outcomes intended to be achieved by the program. In some instances (e.g., discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The Federal awarding agency may include program-specific requirements, as applicable. These requirements should be aligned with agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Preparation, Submission and Execution of the Budget Part 6 for definitions of strategic objectives and performance goals.

(e) Any other information required by the Federal awarding agency.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75882, Dec. 19, 2014; 80 FR 43308, July 22, 2015]

§200.308

Revision of budget and program plans.

§200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see §200.43 Federal share) or only the Federal share, depending upon Federal awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:

(i) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) Change in a key person specified in the application or the Federal award.

(iii) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(iv) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, “Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.

(v) The transfer of funds budgeted for participant support costs as defined in §200.75 Participant support costs to other categories of expense.

(vi) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in §200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(vii) Changes in the approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§200.102 Exceptions and 200.407 Prior written approval (prior approval).

(viii) The need arises for additional Federal funds to complete the project.

(2) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§200.102 Exceptions and 200.407 Prior written approval (prior approval).

(d) Except for requirements listed in paragraph (c)(1) of this section, the Federal awarding agency is authorized, at its option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also §200.458 Pre-award costs.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time

extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

- (i) The terms and conditions of the Federal award prohibit the extension.
- (ii) The extension requires additional Federal funds.
- (iii) The extension involves any change in the approved objectives or scope of the project.
- (3) Carry forward unobligated balances to subsequent periods of performance.

(4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.

(e) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent per detail line item or \$1,000, whichever is greater, of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also §200.407 Prior written approval (prior approval)).

(g) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.

- (1) The revision results from changes in the scope or the objective of the project or program.
- (2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Subpart E—Cost Principles of this part.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.

(i) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75884, Dec. 19, 2014]

§200.336

Access to records.

§200.336 Access to records.

(a) Records of non-Federal entities. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

Any entity of the State including, but not limited to, the State awarding agency, the Auditor General, the Attorney General, any Executive Inspector General, and the Inspector General of the State awarding agency, as applicable, or any of their authorized representatives must have the right of access to any documents, papers, or other records of the subrecipient which are pertinent to the State award in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the subrecipient's personnel for the purpose of interview and discussion related to such documents.

(b) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§200.337

Restrictions on public access to records.

§200.337 Restrictions on public access to records

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except as required by law or except for protected personally identifiable information (PII) when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of

Information Act (5 U.S.C. 552) (FOIA) **51LS140** does not apply to those records that remain under a non-Federal entity's control except as required under §200.315 Intangible property. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.501

Audit requirements.

§200.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than \$750,000.* A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of the part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §200.331 Requirements for pass-through entities

(1) For-profit subrecipients audit requirements. For-profit subrecipients who expends \$750,000 or more during their fiscal year are required to have a Program-specific audit conducted in accordance with §200.507 Program-specific audits.

(2) For-profit subrecipients who expend less than \$750,000 during their fiscal year are required to follow the audit requirements in (i).

(i) Subrecipients and grantees who expend less than \$750,000 are subject to the following audit requirements:

- 1) Grantees and Subrecipients who expends \$300,000 during the awardees fiscal year must have a financial state audit
- 2) All subrecipients who expend between \$300,000 and 500,000, must have the financial audit in (1) and are deemed to be high risk are also required to undergo an agreed upon procedures audit, paid for and arranged by the pass-through entity in accordance with 2 CFR 200.425 for up to 2 out of four of the compliance areas
- 3) All subrecipients who expend between \$500,001 and \$749,999, must have the financial audit in (1) and are have been deemed to be high risk are also required to undergo an agreed upon procedures audit, paid for and arranged by the pass-through entity in accordance with 2 CFR 200.425 for up to 4 areas of the compliance areas.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

E. Application Review Information

1. *Criteria—Required.* This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to

judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. *Review and Selection Process—Required.* This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The Federal awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the Federal awarding agency or Federal awarding agency personnel) and/or who makes the final selections for Federal awards. **If there is a multi-phase review process (e.g., an external panel advising internal Federal awarding agency personnel who make final recommendations to the deciding official), the announcement ~~may~~ must describe the phases.** It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance (see §200.88 Simplified Acquisition Threshold), this section must also inform applicants:

i. That the Federal awarding agency, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);

ii. That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a

Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;

iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in §200.205 Federal awarding agency review of risk posed by applicants.

4. *Anticipated Announcement and Federal Award Dates—Optional.* This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a “rolling” basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43310, July 22, 2015]

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